

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

RECEIVED

JUL 20 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
GC Docket No. 92-52	)	
Re-examination of the Policy	)	RM-7739
Statement on Comparative	)	RM-7740
Broadcast Hearings	)	RM-7741

To the Commission:  
COMMENTS

DOCKET FILE COPY ORIGINAL

Summary: Commenter hereby asks the Commission to implement a "laddered" approach to multiple applicants for a broadcast channel, based on the specific criteria, to make the Commission an "objective" rather than "subjective" judge in such cases.

Comments: Such criteria would be in this order:

- 1) Finder's preference.
- 2) Minority interests.
- 3) Length of time applicant has lived in the community of license proposed to be served.
- 4) Broadcast experience.
- 5) Auxiliary power.
- 6) AM daytimer preference.
- 7) Lottery.

No. of Copies rec'd  
List ABCDE

049

Information to backup each specific criteria:

1) Finder's preference. Commenter would like to share with the Commission, his own frustration and why he is filing comments in this docket. We wanted to provide Taylorville, Illinois, with a local FM radio station, since the former FM station's tower and studios were moved outside the community in May 1993. We filed a petition for rulemaking to assign 94.3 MHz as a Class A frequency for Taylorville, Illinois. We spent the money, we hired the consulting engineer, we found the frequency, we spent the legal fees to get the petition filed, we did the leg work to get 94.3 MHz assigned to Taylorville. That assignment did indeed occur in MM Docket No. 93-256, RM-8326, adopted September 20, 1993, and released September

30, 1993. The filing window for applications for a construction permit, was adopted December 30, 1993 and released January 25, 1994, with the window to have opened March 11, 1994, thru April 11, 1994. Even though we were the ones that spent the time, money and effort to find a frequency that would provide Taylorville local FM radio service, under the present Rules, anyone could file for the construction permit to build the station. We think that is unfair, not only to us since we were the ones that spent the time and money to get the frequency assigned, but to anyone that takes the time and spends the money to find a frequency in order to serve a community.

The filing freeze which went into effect February 25, 1994, as a result of the Bechtel decision, kept us from filing for the construction permit, and that's why we're filing comments in this docket. We strongly believe that finder's preference should be at the top of the list, in the Commission's approach to multiple applicants for a station. This would make the Commission an "objective" judge, rather than a "subjective" judge as the Commission is now.

We further contend that if the Commission wants to get out of the "subjective" judgement business, this approach would do that.

With finder's preference being number one in specific criteria that would be used for objectively judging competing applications, it's a common sense approach to the multiple-applicant issue.

2) Minority interests. As Congress has mandated that the Commission should not do anything to reduce the amount of credit given to minority applicants in such proceedings, this issue would be a second specific criteria objectively used by the Commission in multiple-applicant issues. After finder's preference, the Commission would ask which applicants in a multi-applicant situation, are owned by minorities, and what percentage of ownership is owned by minorities in any application. The applicant with the most minority ownership, would get their construction permit

granted as long as their application was complete and satisfactory. Again, this approach would be an "objective" one by the Commission, rather than having to weight each applicant based on subjective criteria.

3) Length of time applicant has lived in the community of license proposed to be served. This would be criteria # 3 in priority, and again the applicants in a multi-applicant situation would be asked how many, if any, live in the community to be served, at the time they applied for the permit. In such cases where more than one applicant lives in the community, the one living in the community the longest, would receive a grant of their application. Again, the Commission is taking an "objective" rather than "subjective" judgement approach.

Living in a community, and length of time an applicant has lived in the community, is important because the applicant that lives in the community knows better than anyone, how a broadcast facility can best serve that community. Applicants that live in their community are involved in community and civic activities, such as city government, schools, Kiwanis, Rotary and other civic organizations, their local church and Chamber of Commerce. Such applicants have a much better handle on how the community can best be served by the proposed broadcast facility, than those who do not live in the community proposed to being served.

4) Broadcast experience. This would be the 4th "rung" in this ladder, objective approach to multi-applicant situations. If applicants would be equal thru the first 3 "rungs" of objective judgement, this "rung" would make each applicant show the amount of broadcast experience they have. The applicant with the most broadcast experience, under this "objective" approach, would receive the grant of the application.

5) Auxiliary power. This has been part of the Commission's "subjective" criteria in judging broadcast applicants, and under our proposal would be "rung" # 5 in this new "objective" judgement approach. If all applicants

in a proceeding were equal thru the first 4 criteria described above, then the applicant that indicated they would install auxiliary power at their transmitter site, would receive a grant over others in this "objective" judgement approach.

6) AM daytime preference. This criteria has also been used by the Commission in the past, and under our "objective" judgement approach, would be "rung" # 6 in priority of consideration. The applicant, under our approach, that would have an AM daytime preference under current rules, would receive the grant of an application in a proceeding, if all applicants were equal thru the first 5 "rungs" of this ladder approach.

7) Lottery. The chances of multiple applicants making it thru all 6 of these "rungs" in an objective judgement for a station, would be remote. But, just in case all applicants in a proceeding were equal thru these 6 criteria shown above, then the applicants, or applicants that remain after these 6 criteria of "objective" judgement of applications by the Commission, would be thrown into a hat. The first applicant drawn would get the grant, but would have only the initial 18 months from the date of the drawing, to build the station. The second applicant drawn in the lottery, would get the grant after 18 months if the first applicant doesn't build the station. The third applicant drawn in the lottery, would get the grant if the first and second applicants don't build the station in each of their 18-month windows, etc.

All of the 7 criteria above would be applied in the order shown, in an "objective" manner by the Commission, with the finder's preference being at the top of the list. Such an "objective" criteria eliminates the need to determine which applicant gets more credit than another applicant, and takes the Commission out of the job of determining who, in the Commission's eyes, should get a permit to build.

We also strongly support, a return to the three-year rule, which

means broadcasters must hold their station already on-the-air, 3 years from the time they buy it, before they can re-sell it for a profit, or show the Commission they are NOT making a profit on the sale, if sold less than 3 years after purchase. New stations, both radio and TV, should not be able to sell their construction permits for a profit, and should be required to hold their property for 3 years from the time the station is put on the air, before selling at a profit. If they sell before the 3 year limit, the holder of a construction permit or new station must show the Commission that they are not profiting from the sale of the permit or station.


Such a return of the 3-year traffic rule, will provide stability to broadcast properties, and forces a broadcaster to make an effort to serve the community they are licensed to serve. This is part of the Commission's duty of providing the best service possible to the community where a facility is licensed. A return of the 3-year rule would do that, and also provide stability in the broadcast industry, forcing those who have gotten into radio or TV ownership for a quick gain at the expense of serving the community, out of the ownership of stations.

Conclusion: We have a community of some 12,000 people in Central Illinois, who have written letters by the hundreds supporting our efforts to provide local FM radio service to Taylorville. They are as frustrated as we are, in the freeze of new applications as well as the lack of a finder's preference for us since we were the ones that worked to assign an FM frequency to our community. We urge the Commission to enact finder's preference as the leading criteria in an "objective" judgement of multi-applicants in a proceeding, using the 7 criteria we have explained to grant applications in the future.

Qualifications: Commenter is qualified to provide this comment, as the petitioner for a new FM radio frequency for Taylorville, Illinois,

being in the radio broadcasting business for some 21 years, owner of 2 small market radio stations (WTIM (AM) Taylorville, and WCNL (FM) Carlinville, both Illinois), former owner of an FM station in a community of 3600 people where we went thru the assignment of an FM frequency from 1979-1981 (at Virden, Illinois), and as a community leader and businessman in Taylorville, Illinois, being a member of the Chamber of Commerce board, Taylorville Kiwanis Club, and Taylorville First Church of the Nazarene.

Respectfully submitted,  
MILLER COMMUNICATIONS, INC.

  
Randal J. Miller, President